IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

RETRACTABLE TECHNOLOGIES INC.	*	Civil Docket No.
	*	2:07-CV-250
VS.	*	Marshall, Texas
	*	October 30, 2009
BECTON DICKINSON & COMPANY	*	2:15 P.M.

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE DAVID FOLSOM
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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(Proceedings recorded by mechanical stenography, transcript produced on CAT system.)

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P R O C E E D I N G S

COURT SECURITY OFFICER: All rise for the jury.

(Jury in.)

COURT SECURITY OFFICER: Thank you. You can be seated.

All rise.

THE COURT: Please be seated.

Appreciate your patience. We took a little longer with Judge Everingham's selection than we expected, but let me give you a second very brief summary of what we should expect over the next hour and a half, hour and 45 minutes.

Very shortly, I'm going to give you some preliminary jury instructions that will help guide your deliberations in this case or carry out your duties as members of the jury.

After that, then I'm going to give each side up to 45 minutes to give an opening statement.

Then we're going to break for the day, because that will take us to about 3:30 or 3:45. And I have some work to do with the lawyers.

What -- if we started the first witness, it's going to last more than an hour or hour and a half, and I don't think we want to go to 5:00 o'clock probably. It's Friday. We will start slowly into this process.

Now, you have notepads. You're welcome to take notes, and I will give you some instructions about the use of those notes.

Are the parties going to pass out the jury notebook today, or are you going to wait until Monday?

MR. BECK: Your Honor, maybe we ought to wait till Monday, if that's okay with the Court.

THE COURT: You will have a jury notebook Monday, and we will put a copy of the preliminary charge in the jury notebook for your use.

So with those comments, I'll give the Court's initial or preliminary jury instructions.

Members of the jury: Now that you have been sworn, I will give you some preliminary instructions to guide you in your participation in the trial. It will be your duty to find from the evidence what the facts are. You and you alone will be the judges of the facts.

This goes with this concept that I mentioned during jury selection that there are two judges in every jury case; the jury being the judges of the fact -- facts.

You will then have to apply those to facts the law as the Court -- the law as the Court will give to you. As I've stated earlier, you must follow that law whether you agree with it or not.

Nothing the Court may say or do during the course of the trial is intended to indicate or should be taken by you as indicating what your verdict should be.

As I said, you will arrive at your verdict -- or the evidence will consist of the facts that you have from the testimony of witnesses, documents, and other things received into the record as exhibits and any facts that the lawyers agree to or stipulate to or that the Court may instruct you to find.

Now, there are certain things that are not evidence and must not be considered by you. I will list them now.

1. Statements, arguments and questions by lawyers are not evidence.

2. Objections to questions. Lawyers have an obligation to their clients to make objections when they believe that the evidence being offered is improper under our rules. You should not be influenced by the objection or by the Court's ruling on it.

If the objection is sustained, ignore the question; if it is overruled, treat the answer like any other. If you are instructed that some item of evidence is received for a limited purpose only, you must follow that instruction.

Testimony that the Court has excluded or told you to disregard is not evidence and must not be considered.

4. Anything you may have seen or heard outside the courtroom is not evidence and must be disregarded. You are to decide the case solely on the

evidence presented here in the courtroom.

Now, there are two kinds of evidence: Direct and circumstantial.

Direct evidence is direct proof of a fact, such as testimony of an eyewitness.

Circumstantial evidence is proof of facts from which you may infer or conclude that other facts exist.

I will give you further instructions on these as well as other matters at the conclusion of the case, but keep in mind that you may consider both kinds.

It will be up to you to decide which witness to believe, which witness not to believe, and how much of any witness' testimony to accept or reject.

I will give you some more detailed guidelines for determining the credibility of witnesses at the conclusion of the case.

Now, you heard the lawyers talk today about burden of proof, and we have two different burdens in this case.

Preponderance of the evidence. When a party has the burden of proof on any claim or affirmative defense by a preponderance of the evidence, it means you must be persuaded by the evidence that the claim or affirmative defense is more probably true than not true. You should base your decision on all the evidence regardless of which party presented it.

Now, you heard the concept, clear and convincing evidence. When a party has the burden of proving any claim or defense by clear and convincing evidence, it means you must have an abiding conviction that the truth of the parties' factual contentions are highly probable.

Such evidence requires a higher standard of proof than proof by a preponderance of the evidence.

Again, you should base your decision on all the evidence regardless of which party presented it.

In this case, you'll hear from expert witnesses. When knowledge of a technical subject matter may be helpful to the jury, a person who has special training or experience in that technical field, called an expert witness, is permitted to state his or her opinion on these technical matters. However, you are not required to accept that opinion. As with any other witness, it is up to you to decide whether to rely upon it or not.

Depositions. During the course of this case, certain testimony may be read to you by way of deposition, or you may also see it by way of video. The testimony of a witness, who for some reason could not be present to testify from the witness stand, is usually presented in writing under oath in the form of a deposition or by video deposition.

Such testimony is entitled to the same consideration and so far as possible is to be judged as to credibility and weight and otherwise considered by the jury in the same way as if the witness had been present and had given from the witness stand the testimony read to you from the deposition.

Now I'm going to talk about the parties involved in this case, and then I'll give you a brief summary of their contentions.

The Plaintiffs -- and as you recall the Plaintiff is the party that brings the suit -- the Plaintiffs in this case are Retractable Technologies, Inc., which may be referred to as RTI or Retractable, and Mr. Thomas J. Shaw.

The Defendant in this case is Becton Dickinson and Company, which may be referred to as BD.

This is a patent case in which Retractable and Mr. Shaw seek damages for BD's alleged infringement of United States Patents No. 5,632,733; 6,090,077; and 7,351,224.

You will be happy to hear that these patents will simply be referred to as the '773 (sic) patent and the '077 patent and the '224 patent, respectively.

The '77 -- excuse me -- the '733 patent is entitled Tamper-Proof Retractable Syringe. The '077 patent is entitled Syringe Plunger Assembly and Barrel. The '224 patent is entitled Retractable Syringe Assembly Design for One Use.

Retractable and Mr. Shaw further allege that the infringement has been willful. BD denies infringements and seeks declaratory judgments of non-infringement invalidity and unenforceability.

At the conclusion of the trial, when I give you your final instructions, I will explain the appropriate burden to apply to each of the claims and defenses brought by the parties.

I will now explain generally the U.S. patent system, the parts of a patent, and how a person receives a patent.

You've probably seen some of this on the video today, but I think it is worthy of being repeated.

The United States Constitution grants Congress the powers to enact laws to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

Under this power, Congress enacted the patent laws. Patents are granted by the United States Patent & Trademark Office, which is oftentimes referred to as the PTO.

A valid United States patent gives the patent holder certain rights. The patent holder may prevent others from making, using, offering to sell, or selling the patented invention within the United States or from importing it into the United States without the patent holder's permission.

A violation of the patent holder's rights is called infringement. The patent holder may try to enforce the patent against persons believed to be infringers by a lawsuit filed in federal court.

The process of obtaining a patent is called patent prosecution. To obtain a patent, one must file an application with the PTO. The PTO is an agency of the federal government and employs trained examiners who review applications for patents.

The application includes a section called the specification, which must contain a written description of the claimed invention, telling what the invention is, how it works, and how to make it and use it in such full, clear, concise, and exact terms so that others skilled in the field will know how to make and use it.

The specification concludes with one or more numbered sentences. These are the patent claims.

If the patent is eventually granted by the PTO, the claims define the boundaries of its protection and gives notice to the public of those boundaries.

Claims can be independent or dependent. An independent claim is self-contained. A dependent claim refers back to an earlier claim and includes the requirements of the earlier claim.

After the applicant files a patent application, a PTO Patent Examiner reviews it to determine whether the claims are patentable and whether the specification adequately describes the invention claimed.

In examining a patent application, the Patent Examiner may review prior art. Prior art is defined by law. And at a later time, I will give you more detailed instructions on what constitutes prior art.

In general, though, prior art includes things that existed before the claimed invention that were publicly known or used in this country or that was -- that were patented or described in a publication in any country.

The Examiner considers, among other things, whether such claim defines an invention that is new, useful, and not obvious when compared with the prior art.

A patent lists the prior art the Examiner considered. This list is called the cited references. The cited references include the prior art found by the Examiner as well as any prior art submitted to the PTO by the applicant.

After the prior art search and examination of the application, the Patent Examiner then informs the applicant in writing what the Examiner has found and whether any claim is patentable and thus will be allowed.

This writing from the Patent Examiner is called an office action. If the Examiner rejects any of the claims, the applicant then responds and sometimes changes the claims or submits new claims.

This process, which takes place only between the Examiner and the patent applicant, may go back and forth for some time until the Examiner believes that the application and claims meet the requirements for a patent.

The papers generated during this time of communicating back and forth between the Patent Examiner and the applicant make up what is called the prosecution history. All this material becomes available to the public no later than the date when the PTO grants the patent.

Just because the PTO grants a patent does not necessarily mean that any invention claimed in the patent is, in fact, legally entitled to protection of the patent. One or more claims may, in fact, may not be patentable under the law.

The person accused of infringement has the right to argue here in federal court that a claimed invention in the patent is not entitled to patent protection because it does not meet the requirement for a patent.

In other words, an accused infringer may defend a suit for patent infringement on the grounds that the patent is invalid. Nevertheless, patents issued by the United -- excuse me -- United States Patent Office are presumed to be valid, and the accused infringer has the burden of showing invalidity.

I will later instruct you in more detail on the burden of showing invalidity, but note that the validity of the patent-in-suit will be disputed, and it is ultimately your job to determine whether or not the patent is valid or invalid.

Now, a few words, generally, about your conduct as members of this jury.

First, I instruct you that during the trial you are not to discuss the case with anyone or permit anyone to discuss it with you. Until you retire to the jury room at the conclusion of the case to deliberate on your verdict, you simply are not to talk about this case.

You are to hold yourself completely apart from the people involved in the case, the parties, the witnesses, and the attorneys -- the attorneys and persons associated with them.

This also means that if you have a social, as I told you earlier, networking internet site or like Facebook, MySpace, or others, you should not discuss or even mention the case at all on these sites.

Do not receive or post updates about what is going on in this case. And as I told you earlier, make no efforts to investigate on the internet or otherwise of any of the subject -- any subject matter involving this case.

Second, do not read or listen to anything touching on this case in any way. If anyone should try to talk to you about it, bring it to the Court's attention promptly.

As I've said, do not do any research or make any investigation about the case on your own.

Finally, do not form any opinion until all the evidence is in. Keep an open mind until you start your deliberations at the conclusion of the case.

If you wish, you may take notes, but if you do, leave them in the jury room when you leave at night. And remember, they are for your own personal use.

Please keep in mind that oftentimes I'll have a jury request a copy of the transcript. Even though the court reporter is taking down the testimony, that's often not available for days and weeks after the trial is complete. So it's going to be impossible to give you a copy of the transcript. You are going to need to rely on your notes and memory during the deliberations and the exhibits that you may request.

Very shortly, the trial will start. First, each side may make an opening statement. An opening statement is neither evidence nor argument. It is an outline of what that party intends to prove in order to help you follow the evidence.

Next, the Plaintiff will present its witnesses, and the Defendant may cross-examine them.

Then the Defendant will present its witnesses, and the Plaintiff may cross-examine them.

After both parties have presented all their evidence, the attorneys will make their closing arguments to summarize and interpret the evidence for you. And the Court will give you instructions on the law. Then you will go to the jury room to deliberate on your verdict.

We will make a copy of these preliminary instructions, as I said earlier, as part of your notebook.

Mr. Carroll, are you going to make --

MR. CARROLL: Right here, Your Honor.

THE COURT: -- the opening on behalf of Plaintiff?

MR. CARROLL: If the Court please.

THE COURT: Yes.

MR. CARROLL: Thank you, Your Honor.

Good afternoon, Ladies and Gentlemen of the Jury.

Before lunch, my friend, Mr. David Beck, told you that what this was not about is David and Goliath.

Do you remember that comment?

And for all the right reasons about big

and little and all that kind of thing.

But it really brings to mind, this case does, the real story of David and Goliath. And that is how a little guy with better technology -- with better technology can beat the big guy. That's what this case is about.

Because what you're going to find is that our company, RTI, the company up in Denton County, came up with not a solution, not one solution but the only solution and the best solution for this terrible problem of needlesticks.

And what you're going to find in the evidence is just like 2000 years ago, we still had Philistines coming from the north with pointed objects trying to stick people, and that's what we're trying to prevent.

Now, let me start this way, if the Court please.

This, you remember, I talked to you a little bit when you were being questioned about what I call a shot needle. And we've all seen them, and we're all terrified of them.

But really and truly, they don't look that complicated, do they? You've got a plunger up at the top, and that kind of makes sense. That's what you push to push the medicine out.

You've got a barrel. Can everybody see this? You've got a barrel that the medicine is in.

These two little devices are called flanges. Flanges. And that's so you can fit your middle and index finger in front of them and get a purchase on the syringe when you push the plunger to give the shot.

So the idea is the nurse takes the cap off, and that's the sterile needle, and he or she fills the barrel up with whatever material is going to be injected, and then that shot is ready to go.

But -- and this is a very important but -- this needle is still sterile. It's still sterile.

And what happens afterward -- and you-all kind of walked through this thing with me before lunch -- is the nurse, as a person, somebody like you or me -- and the nurse has that syringe with that needle, and that nurse has a person who's probably scared, and that nurse has to, as gently as he or she can, give that shot.

Now, once that shot needle -- this needle goes into that person's arm or leg or hip, it is contaminated, just by definition.

And then walk through this with me, because we've all had it done to us, and we've all seen it done a gillion times.

What happens next? The nurse has to do what?

He or she has to take the needle out, and with a conventional shot needle, that needle, that contaminated needle is exposed.

And so until the good Lord gives us nurses with three hands, what has to happen?

The nurse either has to say: Mr. Patient, I'm not going to worry about your bleeding arm right now. You sit there and bleed, and I'm going to do something to make this contaminated needle safe. Or what we all know is more likely, is because the nurse is there to treat the patients, the nurse is going to put that contaminated needle down, and then the nurse is going to deal with this patient.

And then there sets the contaminated needle that might have HIV on it or might have Hepatitis C on it or might have any other kind of problem on it. And it's there waiting to stick somebody else.

That's the hazard. That's the hazard.

And our solution -- and Mr. Shaw, sitting right here at the end of the table, is the fellow who first made the retractable -- automatic retractable technology work.

I'll say that again. Mr. Shaw, the man at the end of the table, is the first inventor to come up with an automatic retractable technology that worked. Other people had the idea, but his was the first to work. And he convinced the Patent Office that it would work and that it was new, that nobody had done it that way before. And he applied for it and got a patent.

And here's what his patent did. Go back to my example.

Here I am a nurse, and I have my shot needle, and I pull off my cap. There it is; there's the old needle as scary as it looks. And I fill up my barrel. Remember my barrel?

I fill it up with my medicine -- whoop, not that much -- and I'm ready to go. And here's my patient, my Otis Carroll, who doesn't want to be here. And I tell him to be calm; I'm not going to hurt him. And I give him the shot, and I push that plunger all the way down, and it retracts into the barrel of the needle -- I mean, into the barrel of the syringe.

So what has happened? What has Mr. Shaw's invention done?

It has made up for the lack of the

three-handed nurse, because right now, when it's used properly, that contaminated needle never comes out of Otis Carroll's arm and that is a big deal. That is a big deal, a deal that's so big you'll hear testimony from Mr. Shaw that it took him ten years to perfect. Ten years, one decade working as hard as he could.

Because one word that you will hear used to describe this -- and it looks pretty durn simple, right? But one word you'll hear to describe the finished convention is elegant. Elegant.

Sometimes people talk about elegant statuaries or elegant paintings or elegant works of art. Well, inventions can be elegant. They can be so simple that they're beautiful. That's how this invention is described.

So here we are, a little company in Denton County, Texas, and we have this elegant patented solution.

And by the way, this is all we do: Automatic retractable, non-reusable syringes, which means that we never have a syringe that can be left on a table or left on a beach or put in a garbage sack that could stick somebody. That's not our idea of a safe product.

One big issue in this case you're going

to hear, and BD staked out this ground, and that is they're all about choice. They want to give the consumers, the users, the nurses choice.

We don't think there is a choice. They have a lot of products that we say aren't safe, but they sell them as safe. So watch for that. Watch for that during the trial, because this is about the idea of retractable automatic technology.

Let me tell you what you're going to hear in the next few minutes, because it's not all going to be from me.

Mr. Hardin over here, who's an engineer and a lawyer, is going to talk to you about that elegant technology, and he's going to talk to you about why we say and we believe we're right, that our friends over here have trespassed on that technology.

Let's put up the first Farmer Brown picture.

Here we go. This is my cartoon, and you see the posted no trespassing?

That's what the patent law gives Tom Shaw and RTI for his patented technology: Posted, no trespassing. Don't use my -- don't use my property unless I give you the permission, the right, to do that.

We say that in about the year 2000 -- and that's an important date -- that our friends over here at BD came into our fence line, posted, and that they trespassed.

And here's why we say they do. We say that they, along with us and everybody else in this industry, knew that the law was about to change and that the government was about to make this industry go to this technology: Automatic retractable, non-reusable. We had it; they didn't. And we say that's when the infringement occurred.

Now, they'll tell you that the infringement wasn't infringement at all; it was just their opportunity to do something a little bit different or maybe a big bit different. And they'll talk to you about what they did to make it different.

But you're going to be the judge, and you're going to see the proof that they didn't make it different, that they tried to make it look different so it wouldn't be obvious that they had copied us. But in the end, that's what they did.

So what we're going to be asking you to do, when it comes time, is to address whether, in fact, they trespassed. And Mr. Hardin will talk to you about that. And then Mr. Bowles will talk to you about the damage.

And I'm going to tell you two things and then I will be done.

Let's go to Farmer Brown 2.

And you heard me talk a little bit about this to your colleagues on the voir dire, on the jury pick we had before lunch.

The law requires us to time travel; that is, we go back to 2000, when we said they trespassed on our property. And we have to decide -- you have to decide what would have happened if our friends, BD, had played nice and before they trespassed, come to us and said: Look, RTI, look, Tom Shaw, we know you've got a valid patent, and we know we're about to infringe it and we need it. Let's make a deal. Let's make a deal.

And we say -- and you're going to hear from a person who's done those same kind of negotiations, a CPA named Walt Bratic.

We say that that negotiation would have been for a lump-sum royalty, just like an oil royalty where you get so many percent of whatever is produced. But -- this is a very important but -- we say that the but would have been that RTI would not have counted on BD to sell retractable technology, because they had a lot of other stuff to sell that was not safe, we say.

Just like in our little picture here, if

Farmer Brown is trying to decide what kind of a deal to make from the oil company when they're drilling on his property, and he knows, under the hypothetical negotiation because their cards are up on the table, that they've got competing wells all around his place, he might think to himself: How do I know they will pump my well? How do I know they will pump my well?

So maybe what I ought to do is make them tell me, because they've got to -- they've got to shell their corn down and tell me what they know -- tell me how much is down there and what they think they can get. And I'll just make a deal with them for a flat fee upfront, and I won't have to worry about that.

So that's what Mr. Bowles is going to talk to you about.

The first witness you're going to hear Monday, and it's going to be my privilege to introduce you to her, is Ms. Duesman right here. You met her this morning. Kathryn Duesman.

You're going to hear from her. She's a nurse; she's a rancher, she and her husband. And you're going to hear how she joined the company. And it's a wonderful story, and it gave her an opportunity to go to a company and sell and help develop a product that she believes in will save lives.

And you're going to find out that the company she joined nurtures inventions. She's an inventor herself. So that's what you're going to hear in the next few minutes.

And next week, we're going to explain to you from evidence from that chair why, number one, they infringe; number two, it was willful; and Judge Folsom will explain that to you; and, number three, that they owe us damages in the form of this paid-up royalty.

And their defense, of course, is we didn't do it, but if we did do it, your patent's no good. But if your patent's good, we don't owe you much money. That's going to be their defense.

And so that's what you will be faced with.

And we look forward to putting on the case. And with the Court's permission, I'm going to turn the podium over to Mr. Hardin.

MR. HARDIN: Thank you, Mr. Carroll.

May it please the Court.

Ladies and Gentlemen, it is my distinct honor to talk to you about Mr. Shaw's inventions. I am a patent lawyer. That means I write patents and go to the Patent Office and argue for inventors. And I have had the privilege of doing that with Mr. Shaw for a long time.

These are the fruits of his work. These are the United States patents. They are essentially deeds to his intellectual property.

We're going to talk about three of them. I only have a few minutes, so I'm going to be kind of quick with them, but I want to give you an overview about what each of them is about.

And I should mention, as the Court said, that the Patent Office looked at these and cited what we call prior art on the front. It's a list.

May I have that slide, please?

Here we go. So I'm going to tell you right now, Mr. Shaw didn't -- wasn't the first to have the idea of the retractable syringe. He wasn't the first to design the retractable syringe. He wasn't the first patent of the retractable syringe.

I looked up on the internet the other day, however, and you know what? There were about 12 or 14 fellows that said they invented a flying machine before the Wright brothers.

The problem was, none of those machines got off the ground.

Mr. Shaw was the first to make a design to actually work. There's not going to be any evidence to the contrary. His designs actually worked.

So he didn't invent the concept. He wasn't the first to patent just an idea, but he was the first to make a product that actually can help save lives.

Now, how hard was that? If we had all these people with designs and there were all these patents out there, how hard could it be to make one work?

Well, the proof of that comes right from the mouths of engineers at Becton Dickinson. I want to take you back to 1995. Mr. Shaw had been working on the problem for six or eight years.

Becton Dickinson knew about all these patents that had issued. Becton Dickinson is a big company. They get a lot of submissions from folks. Their engineers are bright people. They all had thought about the general concept of a retractable syringe.

But they concluded something about the general idea, and so they published a brochure in 1995 to their sales folks, because, essentially, they said, you know what? We've looked at this idea. The problem is, it can't be done. We can't make it work.

And so we shouldn't get people excited about the idea that the needle would just disappear back up into the syringe, because it's not going to happen.

Let's look at that document. This is from Becton Dickinson files, written by some technical folks.

It is called Rethink Retractables. It was issued in May 3, 1995. Becton Dickinson engineers worked very hard trying to make this idea work for us, but we could never get a retractable needle syringe to perform to the standards we feel necessary to meet our customers' legitimate needs and expectations. And they continue.

I have a vivid memory of the week that the CDC changed its mind about AIDS. Early in the course of the epidemic, they assured physicians and nurses that we had nothing to fear. And then one morning, the message changed.

Within three days, a physician with whom I worked at the time presented us his solution to the needlestick injury problem: A retractable needle syringe. He lacked the ability to actually design such a product, but the basic idea jumps quickly into the mind of any inventor who thinks about this problem.

So it's one of those things when we think about it, oh, yeah, that's a great idea. But in 1995, Becton Dickinson was essentially saying, look, we looked at this; we can't get it done. Let's tell -- let's tell our sales staff that so people don't get excited.

What they probably didn't know at the time, although Mr. Shaw had sent them some early ideas, like a lot of inventors, was that Mr. Shaw had been working day in and day out every night, every day -- you'll hear this from him -- for six or eight years by the time this 1995 date comes around.

And just a week after Becton Dickinson engineers made this statement about, well, it can't be done, Mr. Shaw went to the Patent Office and filed the first of a series of patents that would end up, through appropriate patent procedures, in the three patents we have hear.

Can you see that slide?

This is three days -- the BD brochure was on May 3, 1995. On May 11th, Mr. Shaw asked the Patent Office for these patents, which were eventually issued. And he told them that this invention related to a medical device, and more particularly, a retractable syringe suitable for mass production and assembly, having a low triggering force -- that's something we're going to talk about in a minute -- and a high blowout pressure, which is non-reusable after one use.

These patents issued as a result.

Now, fastforward from 1995 to two years later. It took that long for Mr. Shaw to put in place what he needed to get the product into the marketplace. And as Mr. Carroll has shown you, this product entered the marketplace two years later in about 1997, with Becton Dickinson having said, of course, it can't be done.

We'll deal with this a lot in the trial, but take a look. I want to make sure everybody can see. It's kind of hard to see, but here's the needle right here at the end of my finger.

And after this injection is delivered, the nurse simply presses a little harder, and two things happen. The needle jumps back into the barrel, and the other thing is this end cap, this plunger cap, cuts down to this collar.

Why is that important?

Well, because she can't easily dig it out. Kind of tied the container for us, doesn't it? We've got it all nice and contained. No one can get hurt. She can throw it out.

If this wasn't down inside this collar, it's possible she just might -- somebody might, without thinking, dig it out and drop it.

So that was an important invention, and

the patents-in-suit cover those features.

What was happening at BD?

Well, in 1997, BD had seen Mr. Shaw's product. And Mr. Shaw was anxious to try to get his product to market, so they said, sure, we'll take a look at it. So he sent them some syringes in 1997.

On July 22nd, 1997, they asked for some. Mr. Jon Bell was an engineer of BD. Mr. Jon Bell asked Mr. Shaw to send some syringes.

Great, let's send them all.

What Mr. Shaw didn't know was that BD had basically panicked in 1997, because he had made something that flies. He had made one of these things they said couldn't be made.

What he didn't know was, on the same day he was sending them some product to look at, another person at Becton Dickinson on July 22nd, 1997 was publishing a brochure -- getting a brochure ready to go out to their sales force with all the reasons not to buy this VanishPoint product.

Don't buy it. It's got all sorts of problems. Don't even look at it. If you're asked to look at it -- she has a list of potential negatives. Eventually, of course, what happened was is Becton Dickinson turned around. Within a couple of years of that 1997 date, they understood they had to have this product, and they had to have it badly.

So they went out and bought a company, and I'll come back to that, because that's one of their main defenses. But before I go there, I want to kind of race through with you the basic technology that Mr. Shaw invented. And I'm going to do it in a fashion that really doesn't do it justice, because I have such a short period of time.

So I want to talk to you first about the '224 patent. The '224 patent is really about how this syringe operates, how it works.

One of the key pieces of this product is a little tiny piece in the barrel. It's up here in the nose, a little tiny ring. The needle holder -- the needle sticks into the piece of plastic. That piece of plastic has another ring around it.

And then this plunger moves down to the end of the plunger, hits that ring and knocks it off. That's the way it works.

Mr. Shaw thought of two different ways to do that. He thought: I could have the needle holder with just a ring around it like this, a separate ring.

The other thing that occurred to him was: I could get the same kind of push-off action, the same kind of release action if I put a little bridge between them. If I connect them a little bit, as long as they rake in the same place, they'll work the same.

So he staked out two different claims in the '224 patent. One was this kind of claim on the left. He used this friction ring in blue. There's the plunger. That black bun thing is what pushes the medicine down.

The blue is the friction ring that's setting there in a barrel with all the friction ring getting stuffed in sort of like a cork in a bottle. That's what's holding it in.

The yellow is the needle holder. This is the needle (indicates). There's this plunger. And what happens is, as that plunger comes down, it knocks that ring off.

Now, the second way he thought about doing this is: Look, instead of having this separate piece ring, I could just make the ring out of the same stuff that the needle holder is out of and just put a little bridge in between them.

We have covered where that bridge is with red dots, so you can see it's just a break off. It's a way to do the same thing, to break it off.

Both of these are his pieces of property.

There are claims in the patents for both of these pieces of property. They are both his exclusive pieces of property.

And what we will allege and prove to you is that Becton Dickinson didn't do this, but they did this (indicates). They did this. They used the bridge and the ring and the needle holder in their product to get exactly the same result.

Here's a copy of their product. This is a copy of their 3cc syringe. Note some things about it. It's got a plunger handle; it's got a collar, which we'll show is for the same purpose as Mr. Shaw's product; and it's got this needle.

And then up here in the nose, it's got essentially the same piece, which I will show you here in a minute. But, again, it works exactly the same. Pops back, which is a good thing for safety. It's just that Mr. Shaw invented it.

May I see the next slide?

Here's a little bit more about how this works and I was describing to you. As the -- as the plunger comes down -- that's the red arrow -- it hits the ring, and it pushes the ring off.

See the ring over there on the right?

It pushes the ring off and allows the

needle to fly up.

I've got an animation that makes this even a little more clear. Here we are delivering the fluid. This isn't a true animation. This isn't anybody's arm. Watch closely now, though, as the needle is fired.

We have this blown up so you can see inside.

The yellow right there is that little ring. Here comes the plunger. It's just now pushing. You see the ring pushing it off. It's pushing it off. There we go. Go ahead.

And then once it pushes, it lets the spring needle retract.

That's how Mr. Shaw's invention works, and it works whether the ring is separate or the ring is bridged. See that needle holder. You can break it off; you can push it off. It's the same invention.

Lets look at BD's product now just very briefly. This is the picture in Mr. Shaw's drawing that shows -- I apologize; it's an engineering drawing. But right here -- right here (indicates), we have the same needle holder. This is the thing that holds the needle. Here is the ring. And this little tiny piece right there is the way that the patent showed a bridge.

This is the barrel. This is the end of the barrel, so we're looking at a big blowup of just the part of the syringe at the end with sectioned groups, an engineering drawing of this piece right here (indicates).

Now, let's look at the infringing product, which is the 3cc syringe.

Both -- they had to make two products, I should mention. They had a small one and a large one. I showed you the large one.

This is Becton Dickinson's small version. I actually picked up Mr. Shaw's small version.

Here's Becton Dickinson's small version.

Again, watch the needle. Same kind of action. There's the pictures.

Now, we've got engineering drawings from Becton Dickinson. And Mr. Sheehan, our expert, is going to talk about this in detail with you next week.

But let's see the engineering drawings.

Here we go.

Here's the 1 milliliter, the smaller Becton Dickinson. But note, they both have this -- have a little bridge right there between the two pieces. So does the 3cc. This is the larger one. It's got that little bridge right there.

We also have what we call a retainer.

Remember, that's that other ring. And then we also have the needle holder. Those are claimed elements that are in their product. They are in the words of the claim.

There's going to be a lot of talk in this case about what's in these claims. And I'm sorry you don't have the books, but you'll get them on Monday, and that's really okay.

The boundaries of Mr. Shaw's property are those claims. That's what you need to look at. And to help you with that, the Court has already given us some definitions of some of the words in those claims.

And every time our friends at Becton Dickinson urge you that their product works differently in some way, I urge you to look at those claims and those definitions, because if you read them, you'll find out what they're saying is different isn't.

For example, the term barrel, what's a barrel? Does the barrel have to be one piece, or could it made out of two pieces?

We'll see the definition, and it doesn't make any difference. It really doesn't.

Retainer member. There's a retainer member definition in there. It doesn't say retainer member. It just says what has to happen to the retainer member is that it's released -- the friction that's holding it in the nose has to be released so the needle can drive. It doesn't say it has to be released by sliding action or breaking action or cutting action. All those are included. Yet that's one of the differences that they will urge.

Let's move to the second patent. I'm sorry I'm moving so fast, but I've got three patents, and I'm going to try to run through the last two very briefly.

This patent is really about how the device is used, and it's for the clinician, because I showed you a minute ago that what we have here, when we get through with this, is a nice little container. It's down in here (indicates).

Now, you can -- you can dig this out of here. If you had pretty good fingernails, you could reach in there and dig that out. I can't do it right now. I think if you're skilled at this, you could do it.

But that's not the purpose. The purpose is once it goes in, it's nice and contained.

In here also is a little vent, a little hole in the plunger. And the reason for that is Mr. Shaw discovered, by using that little hole, you could reduce any -- the possibility of splatter coming out in certain situations.

Their product and our product, if used improperly, will spray fluid. We'll acknowledge that. But if you put a little vent in the back and you use the product correctly, in our case, retract it under the skin, you're not going to get any splatter.

So Mr. Shaw filed the patent on those two features. Here's the patent on it. In the '077 patent right here, you'll see that drawing in this patent.

And look, it's the back end now, right? The back -- here's the plunger handle. Here's the vent we use, the little vent right there, and then you can see that it's tucked into the back of this collar.

It's -- the claim says it becomes ungraspable, which it does. It's not undigable; it's not -- you can pry it out of there; but it's ungraspable.

Let's look at BD's product. The 3cc product is the one that uses this, it's the one I showed you, and let's look at their engineering drawings. That's how it works. It tucks in, and the plunger goes in. And now let's look at the other drawing. Here's the -- whoops. Here's their engineering drawing.

Again, they have this nice tall collar so that the cap will go down below it, and it becomes difficult -- it becomes ungraspable. That's why that collar is there.

Last patent -- and I'm going to try to give some time back to Mr. Bowles after I make a short summary.

The last patent really has to do with -- the '733 patent has to do with how you make these things. That's important. I mean, you remember I told you there are a lot of designs out there, but if you can't make them quickly using the manufacturing equipment, you really can't deliver product, folks. And Mr. Shaw got a third patent. Really goes to that issue, how do you make these.

It's the '733 patent, and we have three claims there that we're asserting against their 1cc product, the little product.

And here's basically what happens, is Mr. Shaw figured out, if you -- if you made this a one-piece body, which this is, and you made these parts so that you could run them down to the end and squeeze them like a cork into the end of the bottle, you could put them all in the back automatically, shove them down there on the nose, and have it made quickly and easily. That seems like a -- not a big thing, but it's a huge thing.

And let's look now at their product. This is their version of that, and let's look at how their product is made. These, again, are engineering drawings from Becton Dickinson. I've made a movie to show what happens.

All this stuff that's fed in from the back up to the front and into the nose where it's held by friction until a plunger comes down and pushes it off and releases it.

Now, five minutes about, three minutes about, what you're going to hear, I think, in defense, I told you, in 1998 -- to come back to 1998, Becton Dickinson decided they really had to have this, and they didn't have one.

So they went and bought a little company, and that company had its own design for one of these things. And Becton Dickinson looked at that design, and they're going to tell you that they used that design. But here's the thing: That design -- in the design of that product, it required something else to happen besides just the pushing off, as I showed you, that was used. It required the seal at the front of this. I've lost my plunger.

This black seal, the thing that pushes the medicine in, the way that company's design worked, that seal had to slide back. So the way their product worked was sliding backward, not just pushing forward. Becton Dickinson bought that design, but you know what? It wouldn't work. The company that sold it to them had never made a shot needle to give anyone a shot. They made some samples; they made some filings; they had never been able to sell one, because they couldn't make one that actually worked.

Becton Dickinson -- in fact, Becton Dickinson engineers took that product, and over a three-year period of time -- they bought the product in 1999, had it on their desk. It wouldn't work.

So over three years, they re-engineered it. And what did they do? They made it so this seal wouldn't slide back anymore. They made it so the seal would stay upfront, just like Mr. Shaw's product, and then what activates the syringe is the forward push of the plunger.

Here's a design -- here's a 1999 circa document. This isn't something I drew up. This is from Becton Dickinson's engineering department, circa 1999. There's our product at the top. That's the -- just the plunger part. The syringe barrel is off. That's the plunger part.

Here's the Saf-T-Med. That's the

Saf-T-Med Company that they bought. Notice this area right here. Right here, there's the seal. Here's our seal, right here, that pushes the medicine. Here was the seal on this product.

And to operate, that seal had to -- see it says, breaking tabs. They had to push back this -- the seal had to slide back that way.

The problem with that is, these syringes, when you fire them, have about three times the pressure in it that your garden hose has. Have you ever tried to keep your thumb over the garden hose? That's about 40 psi. Inside these syringes, it's 120 psi.

So what's the problem with the design of this? As you're pushing the medicine, this breaks early. It could break early. If it breaks early, you don't get the medicine.

BD engineers, when they looked at it and studied it, said, well, we can't do that, so we'll do this, and they throw this design out, and three years later, in 2002, they brought out the product that I just showed you with a thick seal at the front.

So here's a summary of what really happened, even though they say something differently. They used something in the front of our syringe. The front of our syringe has this needle holder, so they took that in the front, okay?

Then they went off to the back of the syringe, and in the '077 patent, they took the collar. Whoops. Well, they took the collar, this collar.

And then finally, they took something from the middle. They took the fact that our seal was fixed and took that. They put all three of those things into their product.

I want to thank you for your attention in this matter. I'm going to give what little time is left to Mr. George Bowles.

Before I do that, I want to mention one last thing, just ever so briefly. Saf-T-Med and my client had a run-in in 1997 before Becton Dickinson ever bought them or even knew about them.

There was a big flap. There were letters back and forth. There were threats. What had happened was, was that the product -- each company got ahold of products from the other in an illicit way.

Saf-T-Med got ahold of one of ours that they shouldn't have had; we got ahold of one of theirs that we totally shouldn't have had. Mr. Shaw didn't know what had happened.

Lawyers sent notes back and forth. Nothing ever happened. It all went away. And the reason it went away, frankly, was Mr. Shaw looked at their product and said, well, I don't really care about that product, the Saf-T-Med product. It's not going go work. It's not a problem.

But three years later, it was a problem, and we're here to ask you to help us defend Mr. Shaw's property.

Thank you very much.

THE COURT: How much time remains?

COURTROOM DEPUTY: Four minutes.

THE COURT: Four minutes.

MR. BOWLES: Good afternoon. I'm George Bowles, and this is going to be a sprint through damages, let me tell you. I've got four minutes.

I want to go back to what Otis was talking about when he said the hypothetical negotiation.

I've heard it described as sort of a poker game. In fact, he said it a little bit. He said that the hands of -- the cards in the hand of BD are face up.

In a hypothetical negotiation, RTI knows BD's hand, okay?

And it also knows that the patent of Mr. Shaw is valid, it's enforceable, and it's been infringed.

So I want to briefly, in three minutes, go through just a few documents to show you, in the spring of 2000, where -- sort of the mindset of BD and what they were thinking in regard to the retractable needle syringe technology.

Braden, let's go to the first document.

We know that in 1995 that -- we know, in the early '90s, that BD had attempted to invent a retractable needle.

By 1995, they had given up on it. They said it couldn't be done. You see the language there? Becton Dickinson engineers worked very hard to make this idea work for us, but we could never get a retractable needle syringe to perform to the standards we feel meet our customers' needs and expectations.

That's 1995.

1997 -- let's go to the next slide.

In 1997, in a -- in a meeting called Safety Day at BD that Mr. Kozy actually attended -- in fact, this document, he's the first name on the document -- BD concluded that they would make no further investment in safety syringe technology, because that's not where the money was.

But at that very time, Mr. Shaw and RTI, their product hit the market, and it was a hit in the market.

Let's go to the next document.

This is an internal -- and these documents are BD documents. They are not our documents. They were produced to us during discovery in this case.

Let's go to the next page.

This is internal at BD. This is a -- December of 1998, a little over a year and a half after RTI's product hit the market.

It says, Bigger market allows more than one platform to be profitable. Aggressive look at retractables. RTI has proven that concept is inherently attractive to customers.

Braden, next document.

This is a few months later. Again, this is internal at BD.

Many customers are excited about retractable syringe technology. Many customers are asking BD about it. Some customers are equating retractables with superior technology.

Here's another document to a bunch of people at BD. One of them is to Mr. Kozy. And when I say Mr. Kozy, this is the corporate representative of BD here in the courtroom today.

In the last year, BD has aggressively

started reevaluating the merits of retracting needle technology for skin injection as new designs have surfaced that deliver considerable improvements over the two-handed, multi-step retractable syringes reviewed and rejected in the mid-1990s.

So by the end of 1999, BD saw that the syringe -- safety syringe market was moving quickly away from it, and it was moving to a retractable -- the retractable needle device.

In fact, let's go to the next one.

Internal document. Market research has confirmed -- this is in November of 1999.

Market research has confirmed this, which is the retracting -- this is the product that BD was developing that --

THE COURT: Mr. Bowles, I'm told your time is concluded. You'll have to save the rest of the story for next week.

MR. BOWLES: Thank you very much, Your Honor.

THE COURT: Mr. Beck?

MR. BECK: Your Honor, could the Court give me a 10-minute warning? Would that be okay?

THE COURT: Yes. Ms. Martin, if you'll let me know when 10 minutes remain.

MR. BECK: Thank you, Your Honor.

Ladies and Gentlemen, we're going to be working together for about the next five or six days to resolve the dispute that we have between the parties here.

And this process is what the Judge, over a hundred years ago, said was a sacred process, and I firmly believe that this process we're all participating in is, in fact, a sacred process.

Now, as you listen to the evidence that you're going to hear next week, I ask you to keep basically four points in mind.

The first point is that Mr. Shaw did not invent the retractable syringe, and he also was not the first inventor to receive a patent on a retractable syringe. And I don't think there's going to be any question about that at all.

The evidence will show in this case that there were a lot of people in this country and elsewhere that were concerned about this problem of needlesticks that we don't -- nobody disputes that in this case.

You had people -- other people in Texas that were working on it. You had other people in other states that were working on it. You had people in other countries that were working on it.

And you're going to learn that a man named McGary and a man named Jentzen, who are both Texans, were working on the same problem. And they came up with their own idea for a retractable syringe, and it was different. It was significantly different than the technology that Mr. Shaw came up with.

Mr. Shaw unquestionably believes that his is the best and his is the only one that works. That's not going to be an issue that you-all will be asked to decide, because you've got other inventors who believed that theirs worked as well, because they got patents on it.

So that's the first thing I ask you-all to remember.

The second thing I ask you to remember is that, because many others before Mr. Shaw received patents, Mr. Shaw was only entitled to a patent if he was able to show the Patent Office, our Patent Office, an adjunct to the Federal Government, what he came up with was new and different from what preceded it.

In other words, if somebody else before him had acquired a patent or many had acquired patents and he wanted a patent on a retractable syringe, he had to go to the Patent Office and say, I've got a different invention, a new invention. It's different. It's different from what has preceded me in this case.

And when he filed his patent, he told the Patent Office that he had a specific type of a retractable syringe, one in which the needle was held in place by -- entirely by friction or clamping, friction or clamping.

And you're going to hear that that technology is fundamentally different from the technology that was developed and designed and employed by a Mr. McGary and a Mr. Jentzen from Austin, Texas.

And we are going to show you, Ladies and Gentlemen, that that cutting technology is the technology that is employed in the Integra products that are at issue in this particular lawsuit.

Now, don't take my word for it, because whenever you tell the Patent Office something, they make a record of it. This is the -- one of Mr. Shaw's patents that's in dispute here. This is his patent application here. Excuse me. This -- he filed it on September 29, 1995.

What does it say? Well, he tells the Patent Office why his is different from what preceded it. And I will tell you and we will prove to you, Ladies and Gentlemen, that Mr. McGary and Mr. Jentzen got a patent, and they got a patent before Mr. Shaw even filed any of his three patent applications in this case.

And what Mr. Shaw is telling the Patent Office after he filed his application, he says the prior art -- and remember, you're going to be hearing about prior art. It's what came before him, what patents existed before him, what the literature said before him. Mr. Shaw is telling the Patent Office: The prior art has not recognized a retraction mechanism with separable parts that rely entirely on clamping force or friction. That's what was represented to the Patent Office.

Well, remember, and we will show you, that Mr. McGary and Mr. Jentzen's cutting technology was before. That's what he's talking about there, that what came before is different from mine, and therefore, I am entitled to a patent.

Well, the third thing I ask you-all to remember in this case, and that is, that you can't have it both ways. If to get a patent, you're going to say that your technology is a certain way, after you get your patent, you can't then come in and say after the fact, well, wait a minute, my technology is really -- really covers what preceded it.

You can't have it both ways. And we say that's what is at issue in this case.

The third thing I want you-all to

remember is that in 1990, Mr. Jentzen and Mr. McGary invented a retractable syringe that used a cutter retraction mechanism. You're going to hear that a lot in this case, a cutter retraction mechanism.

And they worked hard to develop that during the 1990s, and BD, my client, was so impressed with their invention, that it purchased all of the rights, the patents, that that company had for $17 million.

And our position in this case is the technology that Mr. Jentzen and Mr. McGary came up with that was part of this Saf-T-Med Company, our client came in and said, we like this technology. It not only has this cutting mechanism that we really like, but it also has the detachable needle, which is another factor that we think that healthcare workers would really like in the marketplace.

And so we bought that company, a company called Saf-T-Med, that we paid $17 million for.

The fourth thing I ask you-all -- and bear in mind, that's the technology that Mr. Shaw criticized whenever he was getting his patent.

The fourth thing I ask you to keep in mind is that our products, Integra products, use this cutting technology, not the friction or clamping approach of Mr. Shaw.

And I want to ask you, Ladies and Gentlemen, an example of -- and I know it's hard to see these, so we've got a blowup, and I want to tell you, this is not our needle in the sense that it's not this big, but I want to show you the model that we have. So I don't want to scare anybody.

Your Honor, may I just step real briefly -- and this is not our regular syringe, so I want you to know that.

But, basically -- Lisa, can you help me a little bit?

This is the cutting -- this is the cutter, and you're going to see a lot about that here. And I'm just going to very simply -- and the cutter comes down, and it actually cuts through this right here. And when it does so, this needle springs back.

So you're going to hear a lot about this cutter and this cutting technology in the case. And that, Ladies and Gentlemen, is one of the big issues in this lawsuit, because the two products at issue here, the Integra 3ml and the Integra 1ml both use this cutter technology. They both use the cutter technology.

Let me tell you a little bit about Becton Dickinson. Some of you may have heard about the company; some of you may not have heard about the company.

As I said earlier, the company was founded up Highway 59 in Texarkana at a train station where you had two people shake hands, make a deal, decided we were going to build a company, try to make it one of the best companies we could, and they did so.

And here we are more than a hundred years down the road. And it's a big company, as I said to you.

But I represent the men and women of this company, and they've spent a lot of time doing a lot of good hard work to develop a lot of really good products.

I'm talking about syringes. I'm talking about other devices that are used for injection. I'm talking about medical devices.

The people are proud of those devices, just as they are proud of what they've come up with. And I'm not trying to denigrate that in any way.

But, Ladies and Gentlemen, whenever our client comes up with a product, it has manufacturing standards. And you've seen references to those in the documents you've seen.

They've got to somehow be able to manufacture a product that is good quality, that is low cost and can be manufactured on a large scale.

Otherwise, it just doesn't work.

And we say that that's what happened in this case after we purchased this technology from this company called Saf-T-Med.

But let's look at some of the other medical milestones that Becton Dickinson have been involved in.

1924, just 27 years after the company was founded, Becton Dickinson introduces the first insulin syringe for patients with diabetes. 1924.

1954, supplied Jonas Salk, the inventor of the polio vaccine, with fringes -- or syringes for polio vaccines.

'60s, first mass provider of disposable syringes.

'70s, developed technology for cancer, stem cell, and AIDS research.

1980s, donates hundreds of millions of syringes to Unicef each year to help eliminate neonatal tetanus. It was killing over 400,000 people per year. That's another milestone that this company has been involved in.

And then when we get into the -- '89, we get into the safety lock, which is a safety syringe we're talking about. They don't like that safety syringe. They criticize our safety syringe. Well, we think it's a good product. It's a different product.

1991, we come up with a safety compliance initiative launch, and we'll talk more about that during the evidence.

1996, the safety glide, which is another safety product. They don't like that one either.

2002, we introduced the Eclipse, which are the two -- two of our products that are being criticized in this case.

And then 2002, where we also had both the -- the 3ml Integra as well.

And I want to tell you something that I'm particularly proud of. Most recently, Becton Dickinson is working on a technology that administers medicine without any puncture of the skin, which, hopefully, will eliminate needlesticks altogether.

So much for Becton Dickinson.

Now, let me turn now to Mr. Jentzen and Mr. McGary.

In the late 1980s, a lot of companies -- not just RTI, not just Mr. Shaw -- were trying to address this issue of needlesticks. A lot of people were trying to do it, and Mr. Jentzen and Mr. McGary were, too.

And let me tell you about their story.

Mr. Jentzen and Mr. McGary had both been laid off from their company. One was an aerospace engineer. And they were trying to -- and one of them happened to be watching television and saw something about these needlestick injuries.

And thank goodness, there are people like this, because he said, maybe I can do something about this. And he educated himself. He read. He went to the library. He read articles.

And then he and Mr. Jentzen got together and both worked in an effort to try to come up with something. They eventually met a man named Erbs, E-R-B-S.

Now, Mr. McGary is deceased, so we can't hear from him.

You're going to hear from Mr. Jentzen. We've got his sworn deposition testimony. You're going to see his video and hear his testimony. And you're going to hear from Mr. Erbs in this case.

And they're going to tell you about this technology, and they're going to tell you about Saf-T-Med, and they're going to tell you about the products that they hit them up with so that you better understand the technology that we say eventually evolved into the Integra products that are involved in this particular case.

Let's look at some of the other patents that have been involved in the matter.

This is the patent that Mr. McGary and Mr. Jentzen from Cedar Creek, Texas, got. They filed it in October 3rd, 1990. Here it is.

Let's look at the next one.

This is by a man named Mr. Harry Kaufhold and others from Houston and Cypress Creek, Texas. They filed for a patent on a retractable syringe in 1995.

Here's another one by a Mr. John Toft, who filed a patent application for a retractable syringe in 1992.

The next one is by a Mr. Elgene Gillespie, who's from Ohio. He filed for his in May of 1992.

The next one is Mr. Murray. He filed for his in September of 1992.

And these are all patents on retractable syringes, Ladies and Gentlemen.

And then we go to a Mr. Caselli, who files on May 4, 1992.

And then we get to a Mr. Marshall, who

filed for his in September of 1991.

These seven patents that I have showed you all came before Mr. Shaw received -- even filed for patent applications that were involved in this case.

In other words, these seven had already gotten their patents before Mr. Shaw even filed for his in this case. He didn't file for his patent application until '95, and it wasn't approved until 1997.

Why is this important? It's important because, just because they have a retractable syringe and we have a retractable syringe, that's not the end of the analysis. A lot of people had ideas and inventions and patents for retractable syringes.

What you need to look at is, what is important, what is critical in these inventions, and what is different in these inventions? Because as you've already heard, there are a lot of parts that are very, very similar in this case.

If we can show the syringe.

You know, you've already heard about the barrel. You've already heard about the thumb cap.

You've already heard about the needle assembly.

And nobody disputes that. I mean, everybody agrees that in parts of retractable syringes, a lot of parts are the same. But that doesn't mean anybody's infringing anybody's patent.

As you'll see, some of these patents that preceded Mr. Shaw's patents had very similar attributes as well in this case.

Now, we say, and we intend to prove, that Mr. Jentzen and Mr. McGary were among the first inventors to develop this unique technology of a cutter -- cutter technology.

And when you see how this technology developed, you'll see, for example, why there are major differences between the two.

If we could go to the next slide, please.

I mentioned before the patent that Mr. McGary and Mr. Jentzen had received. This is one of the figures in their patent. And you see, for example, it's got the -- you know, the -- it's got the thumb cap. It's got the barrel. It's got the needle assembly.

Again, this is before Mr. Shaw received any patent.

And you're going to hear a lot in this case -- and we showed it to you in this demo -- in here is where this cutter is, this cutter that we're talking about.

And this cutter moves forward, cuts

through here, and once it cuts through that seal, usually rubber or plastic, then the needle shoots back into the -- into the syringe and accomplishes the retractor -- the retractability that we're looking for in this case.

And here's what Mr. Jentzen and Mr. McGary said about theirs. You've already seen what Mr. Shaw said and why his is different from what existed before.

Here, Mr. McGary -- and we're going to talk about a cutting tip configured inside the sealing member wherein the cutting tip is a cylindrical cutting means or knife extendable through the member.

In other words, it's a cutter, like a knife that's going through here. That was different. That preceded what Mr. Shaw told the Patent Office. He said his was different than that.

But Mr. Jentzen and Mr. McGary went further, and they explained how their cutting tip or knife worked, and they talked about how it works by the cutting tip extending through the retainer thereby causing the biased needle to be released into the plunger.

So they not only showed the Patent Office how it worked, they told them exactly why it worked the way that it did. And that's when they got their patent.

Now, you notice this doesn't say anything about clamping or friction, clamping or friction that Mr. Shaw's patent does.

Well, what happened after they got their patent? Well, I told you about Mr. Erbs and Saf-T-Med.

Well, here's an example of one of the first prototypes that Saf-T-Med came up with. And I know you can't see that real well, but up in here, that's where the cutter is. This is one of their first prototypes, Mr. Jentzen and Mr. McGary.

You can't very well see it here, but you can see it up there. That's one of their first prototypes. But they kept working on it. They kept trying to improve it, make it better, and they eventually did so.

And over the next several years, they worked to try to come up with what they believed was a commercial product out of their invention.

Now, once Mr. Erbs got involved, he was more of a businessman as opposed to an engineer. And so Mr. Erbs is trying to get this moving forward in an effort to try to make this a commercial product.

And one of the things he does, he goes to the Food and Drug Administration, and he gets approval from the Food and Drug Administration to market this particular product. He got that in January of 1998.

So you can see the timeline here. Come up with the patent. They get Mr. Erbs involved. Mr. Erbs goes to the FDA. And in January of 1998, he gets the approval of the FDA.

This next slide shows you an example of the Saf-T-Med syringe as it was developing over time, and you'll see that's where the cutter is. The cutter is in here, and they cut through here, and then the needle shoots back.

And here, this is just the needle assembly. This is the cap that fits over the needle assembly. So you can see, from the prototype you've seen, how this thing is progressing over time.

Now, you heard that, well, Saf-T-Med and RTI had a little bit of a run-in. Well, we'll get into that during the course of the trial. There ain't no question they had a run-in. And after they had that -- BD's not involved in this. This is between Saf-T-Med and RTI.

Well, during this run-in, when there were lawyers writing back and forth, you know what? They never accused Saf-T-Med with this cutting technology of somehow infringing on their technology or their patents.

Never once did they accuse them.

Now, they're going to tell you now, well, it just didn't work. Well, it did work. It did work. It was different, but it worked.

Now, as you learned this morning in the video about the patent process, you can get a patent when something you come up with is new, and it's useful. That means when you -- to get a patent, you have to show that what you -- what you've come up with, your idea, is different, different than what came before it, the prior art, as you've heard referenced already.

When the Patent Office issues a patent, it's made a determination, at least based on the information before it, that what preceded it is different and it is usable.

And you're going to be asked some questions in this case about invalidity and whether a patent is or is not invalid in this case.

Our position is, just so we're clear, that you cannot have it both ways. You cannot represent to the Patent Office that what came before it, for example, McGary and Jentzen, is different, and therefore, you're entitled to your patent. And then after you get your patent, say, no, it's not different. Our patent covers that. You can't have it both ways.

You will have -- you will not have to decide in this case which product is better. They think their product is better, and that's fine. They think their product is great, and that's fine. We think our product is a good product, but you're not going to be asked to decide that case.

But you are going to be asked to decide whether or not our technology and our retractable syringe violates their patent. We say it does not; they say that it does.

But we also say that Mr. Shaw's own statements to the Patent Office confirm that our technology is substantially, materially, and significantly different from the technology that he came up with, mainly, the cutter technology that we're going to be getting more into during the course of the evidence in this case.

Let's look at the next slide, please.

This is what Mr. Shaw said of the '733 patent. One of the problems of the prior art of retractable syringes is the sheer number and complexity of parts, which must be formed and assembled. Other problems with the prior art are dependence on flexing or breaking of internal parts by the plunger in order to release the mechanism.

In other words, there's something that's going through or cutting, which might end up in the breaking of internal parts.

And our technology, you do cut through seams. He's criticizing that, saying that that's one of the problems with the prior art. That's why we need our patent. It's different, it's new, and it's useful.

Small broken-off pieces can present a risk of hang-ups. So you can't criticize a technology on the one hand to get a patent, and then later come on and say, no, no, our patent actually covers that cutting technology.

Now, Judge Folsom is going to explain patent claims and elements at the conclusion of the case, and we believe that he will tell you that in order to find that an accused product infringes a patent, you must find that the accused product violates every element of every claim in the patent.

And the Judge is going to instruct you about certain terms and what they mean, and those are the terms that you must follow in the case.

There are four issues, four basic questions that we think you're going to be asked that relate to this infringement issue.

One is: Do the Becton Dickinson Integra

syringes use clamping or frictional force to hold the needle in place?

Our position is, it does not. Our position is that this cutting mechanism and this seal is what holds it in place. And after the cutting mechanism goes through, that's what causes the needle to retract.

Second question: Are frictional forces or clamping forces released in the Integra syringes when the needle is retracted?

Again, the answer is no, because friction and clamping is not what holds the needle in place, and it's not what releases the needle whenever that friction or clamping is somehow lessened.

Third question: Do the Integra syringes have a vent through which air flows?

Again, our position is that they do not.

You will hear in this case, for example, about what are called core pin holes.

They've got some vents that they say are in their product. We don't have vents in our product, and I'll talk about that a little bit more in just a moment. But that's another issue that you're going to have to be -- you're going to have to address in this case.

You were told a few moments ago that we

should have come to them and somehow asked their permission to come forward with this cutting technology. You've also heard that they came to us and wanted us to buy their technology. Our people, and they will tell you, didn't like their technology. It didn't have a detachable needle. It had other features that our people did not like. And so we told them no.

They tried to sell it to other companies, and you'll hear a little bit more about what other companies said about their technology.

But our people did like this cutting mechanism technology, because they thought it was new and different, and they also liked this idea of the detachable needle for reasons our people will talk to you a little bit about during the evidence.

Bill Kozy, you're going to hear from him during the course of the trial. He's Executive Vice President of the company, and he'll tell you that one of the major reasons our client was not interested in VanishPoint was because of this detachable needle that their technology did not have.

You will hear evidence that Mr. Shaw went to other companies to try to sell his product, and other companies reached the same conclusion that Becton Dickinson did, specifically a company called Sherwood.

BD looked at technology covered by a lot of patents, and we focused on the cutting technology that I've told you ladies and gentlemen about.

Saf-T-Med came to BD, wanted to partner with us, and that's when our client, after being so impressed, decided to buy the company for $17 million. After that, we began working on what eventually became the Integra syringe, and you'll hear from Mr. Kozy and a person named Chad Smith, both of whom work for BD. And they'll get into that in more detail with you.

Did Becton Dickinson make any changes to the Saf-T-Med design?

You bet they did. They had to somehow make certain that their manufacturing standards were satisfied and honored in this case.

But did Becton Dickinson change the basic cutter mechanism concept?

The answer is, no, they did not. And our people will explain that in more detail to you as well. I want to show a short animation that shows the difference between the two products.

First, we're going to show the RTI product and how theirs works.

If we can run that, please.

(Animation playing.)

MR. BECK: That's the friction and clamping we're talking about. The needle retracts. Now let's look at the BD technology and how it works, please.

This is the BD cutter mechanism technology. You see the cutter. The cutter goes through, and then the needle retracts back into the syringe.

You will hear from a Dr. William (sic) Sibbitt, who's a medical doctor, who's not only a good medical doctor, but he's invented syringes, and he'll talk about the products involved in this case.

Now, I said I was going to mention vent holes for just a moment. In addition to explaining how these retraction mechanisms in these two different products work, Dr. Sibbitt will talk about what are called vent holes.

Now, Mr. Shaw includes in his patent the requirement that you must have vent holes during the retraction process.

The BD Integra does not have vent holes. It does have, however, what are called core pinholes. And during the manufacturing process, you will have holes that actually will hold the device while the plastic is being laid, if you will. And those are my terms.

This is the outer plunger. The inner plunger actually fits -- in other words, this fits into this. See, here's the cutter mechanism here.

And you're going to hear about the vent holes. Well, the vent holes -- here -- here are the vent holes that they're alleging took place. These are core pinholes.

These actually hold the device in place during the manufacturing process. They're not a designed vent hole that somehow was intended to release airflow, unlike the product that RTI has in this case. Instead, our core vent (sic) holes are actually in the inner plunger, whereas theirs is substantially different.

And their argument is that somehow they put theirs in to reduce blood spatter. These core pinholes aren't put in ours to reduce blood splatter. It's solely as a result of the manufacturing process. So the purposes are even different.

The last thing I want to talk to you about is what is called inaccessible for grasping, because Mr. Shaw's patents also cover a plunger that must be inaccessible for grasping after the syringe has been fully activated and the needle has been retracted.

Well, we believe the evidence will show that the Becton Dickinson plunger is accessible after the syringe has been fully activated. In fact, we asked Mr. Shaw, when we took his deposition, to somehow pull it out to see whether or not it was accessible, and he did so.

If we could show that, please.

(Video playing.)

QUESTION: Okay. Okay. Can you pull the plunger out and show me the tip of the plunger, what it looks like?

ANSWER: Hmmm.

(End of video clip.)

MR. BECK: So you see, he was able to pull out the part of the device that is supposed to be inaccessible for grasping based upon one of his patent requirements.

Let me turn now to the issue of invalidity. And I'm just going to spend very little time on this.

As I explained before, when someone obtains a patent, he or she is entitled only to a patent on something that is new or different.

If something was addressed by a prior patent and we show you by clear and convincing evidence that it was, in fact, shown by a prior patent, then that patent, at least that part of it, is invalid.

And although the Patent Office tries to avoid issuing invalid patents, sometimes it happens, as you've seen from that video that His Honor showed you-all earlier today.

The Patent Office has to make a lot of decisions, and they make decisions based on the information they have before it or what's been called to their attention.

The evidence will show, we believe, that there are at least two instances in which Mr. Shaw's inventions were, in fact, covered by earlier patents, and, therefore, at least in that respect, they are invalid.

And first, if you accept what Mr. Shaw is now saying, that his patents cover everything, including cutting, then you should find the patent invalid, because his patent actually criticized cutting, because that took place and was patented before him.

The vents requirement in the '077 patent. There's a man named Gillespie, who filed for a patent on May 8th, 1992, and he got his patent in 1993.

And here's a man, again, before Mr. Shaw's patents, that talked about vent holes. And he talks about the chamber is vented at its rear end --

THE COURT: Mr. Beck, you have 10 minutes.

MR. BECK: -- by vent holes.

Thank you, Your Honor.

So we see again, here's somebody else, before Mr. Shaw got his patents in this case, who had vent holes. We don't even have vent holes. But if you have to have vent holes, it clearly shows that somebody had vent holes as part of this retractable syringe technology before Mr. Shaw did.

This idea of having vents in a syringe was not new at all, and nowhere in Mr. Shaw's '077 patent is there any reference to this Gillespie patent that we've talked about just a few moments ago.

And we say, because the Gillespie patent was first, and it had vents in the plunger, that Claims 10 and 25 of the '077 patent should be invalid.

With respect to the inaccessible for grasping requirement in the '077 patent, again, previous patents, including McGary and Mr. Jentzen's prior patents, had already come up with that idea as well.

So there was nothing really new about that at all.

So you can see we've got a dispute here.

We've got a real dispute and a genuine

dispute. But, Ladies and Gentlemen, no one has a monopoly on good ideas. There are a lot of people that have good ideas.

And just because one person has a good idea and believe they've got the best idea, that doesn't mean other people don't have good ideas, too.

And our people believe that other people did have good ideas. And our people liked the technology that these other people with good ideas came up with. And our position is that our Integra products really relied on that technology. We developed our products based upon that technology.

And so in conclusion, I just simply want to say that our position is very simple, and that is, you cannot tell the Patent Office one thing about earlier patents and say that somehow I'm entitled to a patent, because what existed before is no good, what existed before is different. And then after you get your patent, say, ah-ha, what existed before my patent somehow trumps that.

It's not right. We say that it's improper, and probably what's worse, it's not fair. It's just not fair.

We look forward to working with you-all during the next five or six days in addressing this dispute, and, hopefully, it will be an enjoyable experience for everybody.

Thank you-all very much.

THE COURT: Thank you, Ladies and Gentlemen, for your attention. I know it's been a long day, and we're going to allow the jury to go, just simply recalling my instructions not to discuss this case, investigate it in any fashion.

Return at 8:45, 8:50 Monday. We'll try to start promptly at 9:00 a.m. Have a pleasant weekend.

Mr. Potts, if you'll escort the jury out.

COURT SECURITY OFFICER: All rise for the jury.

(Jury out.)

THE COURT: Please be seated.

Let's talk about Monday's events. What might we expect from RTI by way of testimony Monday, Mr. Carroll, Mr. Bowles, Mr. Hardin, by way of witnesses?

MR. BOWLES: On Monday, Your Honor, we will have Kathryn Duesman. Then we'll have Neil Sheehan, who is a technical expert. Then we'll have Mr. Shaw. Those are three witnesses.

And then we'll have some videos. We'll call Dr. Hyman after that.

THE COURT: Sounds like a full day. Any -- we'll talk about remaining exhibit issues, but any slides to be exchanged concerning these witnesses that haven't been furnished to BD, aside from exhibits?

MR. HARDIN: Yes, Your Honor. There will be some slides for Mr. Sheehan's testimony.

THE COURT: When do you expect those to be provided to BD?

MR. HARDIN: We agreed 36 hours.

THE COURT: What I want to avoid, though, is like yesterday, I received a call at 4:00 o'clock.

We've got -- we've got problems, Judge. I'm waiting at the office until 5:30. I have yet to receive them. My clerk says some of them came in at 7:00 o'clock.

You know, we don't like to be addressing these issues Sunday night at 10:00 p.m. and on the way down, so --

MR. HARDIN: Your Honor, we're meeting over the weekend. We will confer over the weekend and --

THE COURT: Well, I want to -- I want to know by no later than noon --

MR. HARDIN: Easily, Your Honor.

THE COURT: -- Sunday if there are any

issues.

MR. HARDIN: If there's an issue.

THE COURT: And the nature of the issue and give us a copy of the slides by e-mail. I think you all have Mr. Kizer's e-mail address. That way it gives us a little time to look at those issues before Sunday night.

Now, anything else concerning Monday's events? And I want to take up these exhibit issues in a minute, but --

MR. BECK: Judge, just for planning purposes, we're going to invoke the Rule on Monday, Your Honor.

THE COURT: Very well.

MR. HARDIN: Your Honor --

THE COURT: Mr. Shaw is a Plaintiff individually, and you have a corporate representative, and, obviously, BD is entitled to a corporate representative.

MR. HARDIN: Your Honor, I don't have the wording of Your Honor's motion in limine in front of me, but with all due respect, I think Mr. Beck stepped over the line on the motion in limine, and we would like to consider asking for a corrective instruction.

THE COURT: What area?

MR. HARDIN: The idea that Mr. Shaw's patents can't cover cutting technology in particular. I think Your Honor was pretty clear in the motion in limine that -- that an argument that Mr. Shaw's patents were -- could not cover cutting and breaking; in other words, to release the friction was not appropriate.

THE COURT: Mr. Beck, you want to make any comment?

MR. BECK: Judge, I didn't say that. What I said was that's the issue in the case. Their position is it covers it. Our position is it doesn't.

THE COURT: This is going to be a very, I think, hotly contested issue throughout the trial on going over the line in the motion and as to the motion in limine, and I'll take a look at the transcript over the weekend and look at it closer.

I thought both of you sort of flirted with violating some of the Court's orders and some of the -- sort of what I consider the trial of a patent claim as comparing the asserted claims to the accused device.

We had all sorts of comparisons between the RTI device and the accused device, and I'm just very quietly watching, but I'll take a look at the transcript.

My clerk reminds me to ask, is the Doctrine of Equivalents still in this case?

I noticed from the pretrial order there was a -- that claim being asserted, and then in the jury instruction, there was no instructions on that issue. Does the Plaintiff still have it in the case?

MR. HARDIN: Your Honor, I don't believe so. I think we'll withdraw the Doctrine of Equivalents.

THE COURT: So that's out. That's out of the case.

MR. BECK: Yeah.

THE COURT: I trust the Defendant doesn't --

MR. BECK: We agree with them, Judge.

THE COURT: Very well.

Mr. Beck, you made the comment during jury selection, there are only two claims, which there's an argument of invalidity. Is that a correct statement? What -- what is the --

MR. BECK: I think it was Claims 10 and 25 of the '077 patent. Yeah. I mean, there are other -- there are other claims, but what I was talking about is, with that particular subject, it was just those two claims.

THE COURT: I see.

So whatever claims of invalidity are stated in your pretrial order, you're still standing on those?

MR. BECK: That's correct, Your Honor.

THE COURT: Any other matters?

MR. DAWSON: Your Honor --

THE COURT: The exhibits. We had two exhibit issues that arose on the redaction -- redaction issues. I just simply said in chambers, please meet and confer and try to let us know by 5:00 o'clock. I think that should be worked out by the parties.

If the Plaintiff sees the Defendant's redactions and you feel they've gone too far, let us know. But I would hope the parties can agree upon that. If not, try not to give me a thousand pages of exhibits to look at. Let's try to at least narrow the issues involved.

The other issue is, Mr. Dawson, you have offered additional exhibits that were not listed on the pretrial order, and it's my understanding, basically, this goes to the loss-of-profit issue; is that correct?

MR. DAWSON: Yes, Your Honor. I don't want to speak for Mr. Wilson, but I think when we're conferring on the redaction, we may be able to reach agreement on a limited use of those documents.

And so with his permission, I'd ask the Court to defer that until --

THE COURT: Is that correct, Mr. Wilson?

MR. WILSON: That's correct, Your Honor.

THE COURT: Also, in the same timeframe, let me know where you are on those exhibits and if any issues remain concerning those.

MR. DAWSON: One.

MR. HARDIN: Your Honor -- I'm sorry.

MR. DAWSON: We have notified RTI that we're withdrawing a couple of our defenses. How would you like us to notify the Court of that?

THE COURT: You can tell me right now, if you want to.

MR. DAWSON: If I knew what they were, I would, but we will note -- we will take it up --

THE COURT: Let us know Monday morning.

MR. DAWSON: Monday morning, we'll tell you. We've withdrawn a few defenses.

MR. HARDIN: Your Honor, I think I spoke too broadly, because I thought we had a withdrawal of some validity defenses when I said we're dropping the Doctrine of Equivalents, because those are interrelated concepts.

I have to say I'm not going to urge the

Doctrine of Equivalents on every claim, but, for example, breaking and cutting, we may have to -- so I want to --

THE COURT: Do you know which claims you might be dropping that as to?

MR. HARDIN: I can -- I will inform the Court on Monday, but I need some -- I thought we had a withdrawal of some invalidity defenses, and we didn't have that.

So with the Court's permission, I'd like to -- we will certainly give the Court notice before --

THE COURT: Withdraw it as to certain claims but probably not all claims.

MR. HARDIN: That's correct, Your Honor.

THE COURT: Fair enough.

Any other matters?

Everyone have a pleasant weekend. I'm confident that a lot of work will be done over the weekend.

We'll be in recess.

COURT SECURITY OFFICER: All rise.

(Court adjourned.)

* * * * *

CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/s/_______________________ ____________________
SUSAN SIMMONS, CSR Date
Official Court Reporter
State of Texas No.: 267
Expiration Date: 12/31/10

/s/___________________ ________________
JUDITH WERLINGER, CSR Date
Deputy Official Court Reporter
State of Texas No.: 731
Expiration Date: 12/31/10